

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

CLAIR NEAL McCULLEY,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-13-942-D
)	
SETH WALLACE, <i>et al.</i> ,)	
)	
Respondents.)	

ORDER

This matter is before the Court for review of the Report and Recommendation [Doc. No. 5] issued by United States Magistrate Judge Gary M. Purcell pursuant to 28 U.S.C. § 636(b)(1)(B)-(C). Upon initial screening, Judge Purcell recommends that the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 be dismissed without prejudice for failure to exhaust state court remedies and based on *Younger*¹ abstention, and that Petitioner's claims for damages and other equitable relief be dismissed without prejudice for lack of jurisdiction.² Petitioner has filed a timely objection. Thus, the Court must make a *de novo* determination of the portions of the report to which a specific objection is made, and may accept, modify, or reject the recommended decision in whole or in part. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Upon consideration of Petitioner's objection, the Court discerns no issue to be decided. Petitioner does not address in an intelligible manner the exhaustion and abstention doctrines discussed by Judge Purcell, nor does Petitioner address the Court's jurisdiction to grant other relief

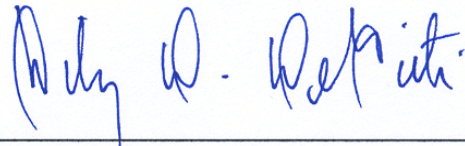
¹ *Younger v. Harris*, 402 U.S. 37 (1971).

² The Report mistakenly recommends a dismissal with prejudice; a dismissal for lack of jurisdiction must be without prejudice. *See Abernathy v. Wanders*, 713 F.3d 538, 558 (10th Cir. 2013).

sought by his Petition. Upon *de novo* review of the Report, the Court finds Judge Purcell's analysis is correct, and concurs in his recommendations.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 5] is ADOPTED. The Petition is denied without prejudice to refiling after pending criminal proceedings are concluded and state court remedies are exhausted; all other claims are dismissed without prejudice for lack of jurisdiction. A separate judgment shall be entered accordingly.

IT IS SO ORDERED this 30th day of September, 2013.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE